Supreme Court, U.S.
FILED

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No._____

In The
SUPREME COURT OF THE UNITED STATES
WALTON HALLECK DONNELL,
Petitioner,
v.
THE SUPREME COURT OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

Walton Halleck Donnell
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21 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does the Fourteenth Amendment protect two separate persons where an attorney represents himself?

2. Can a state hearing panel excuse state officials from having to testify where notice and an opportunity to oppose is given after its action but at the beginning of the hearing itself?

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Disciplinary Counsel v. Donnell (1997), 79 Ohio St. 3d 501

LIST OF PARTIES

1. Supreme Court of Ohio
2. Disciplinary Counsel, Relator (Quasi plaintiff)

STATEMENT OF BASIS FOR JURISDICTION

Date of judgment sought to be reviewed: October 1, 1997.

Statutory Provision: Title 28, United States Code, §1257 (a).

CONSTITUTIONAL PROVISIONS AND STATUTES

Fourteenth Amendment

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ohio Rules of Civil Procedure

> "Rule 7. Pleadings and motions
> "(B) Motions.
> "(2) To expedite its business, the court may make provision by rule or order for the submission and
> determination of motions without oral hearing upon brief written statements of reasons in support and opposition"

STATEMENT OF THE CASE

This attorney-license-suspension case is the offspring of petitioner's domestic case where he represented himself, numerous filings from which were the basis for granting of an extension of time by Justice Stevens in an unrelated case, No. A-530, 1995. The Board of Commissioners On Grievances and Discipline of the Supreme Court of Ohio described it this way:

> "The graveman of the charges of ethical violations against Respondent emanate from his marriage that was dissolved by the husband and wife on or about January 31, 1994.
>
> " ***
>
> "Basically the allegations of disciplinary rule violations by Respondent concern his activity in the above noted three hearings [where Respondent represented himself]." Board Report, October 20, 1996.

The exact method or manner used to raise petitioner's two federal questions can be seen from the following excerpts from the transcript of the hearing before the Disciplinary Panel of the Supreme Court of Ohio on April 19, 1996:

> DISCIPLINARY COUNSEL: "In the middle of the paragraph at the top you referred to Chief Justice Moyer as the fox."
>
> MR. DONNELL: "No, I did not refer to him as that, I referred to an affidavit in which somebody in a group of people had referred to-"
>
> DISCIPLINARY COUNSEL: '"And who was that somebody?"
>
> MR. DONNELL: "Who was that somebody? Well, we have quite a number of people dissatisfied with rulings in which I was the attorney for them. I can't say at this point in time who it was."

DISCIPLINARY COUNSEL: "So is it, is the affidavit attached?"

MR. DONNELL: "Yes, it is. It should be. I was going to ask you refer to it as an affidavit I had right at the front."

DISCIPLINARY COUNSEL: "The affidavit calling Justice Moyer the fox. Is that attached here?"

MR. DONNELL: "Yes. And also stating that I was, under the Fourteenth Amendment, a litigant father and an attorney, two separate persons. And I filed it as a litigant father, not as an attorney. So, as an attorney, I object to the fact that you bring this up because that was filed as a litigant father, not as my other person under the Fourteenth Amendment. I very carefully separated myself in most of the later filings as litigant father filing, which I have a right to do under the Fourteenth Amendment. (Emphasis added.) (T., pp. 130, 131, and also verbatim in petitioner's Brief On Objections, p.. 12.)

The said affidavit introduced into evidence by disciplinary counsel is reproduced at Appendix C, and a letter written by petitioner to the mother of their three children is reproduced at Appendix D, both under federal question No. 1 herein. Federal question No. 2 was raised by these excerpts from the transcript of the Disciplinary Hearing:

MR. DONNELL: "Third objection. Rule 5 on its face is unconstitutional as it does not provide for an appeal to the Supreme Court of Ohio before respondent (sic) is required to put on his due process defense without the testimony of the subpoenaed witnesses depriving Respondant (sic) of procedural due process.

"***Respondent (sic) for the record, requests this panel stay its order and grant Respondent (sic) a reasonable time, 14 days or otherwise, to respond not only to the motion [to quash], but to the order, which I have not received a copy of the order yet." T., p. 8..

* * *

MR. DONNELL: "*** So its been 65 hours and about 20 minutes since I've learned both of these facts. That the motion was actually filed and then the order had already been granted and I had never been given any opportunity, under Rule 7 and Rule 12. I even gave specific sections, but to respond, they give 14 days. And I'm just wondering how this is comporting with the Supreme Court holding in re (sic): Ruffalo,, that's R-U-F-F-A-L-O, 1968, 390 U.S.-544. In that case the Supreme Court stated that a proceeding, and yes it's verbatim, to suspend a professional license---"

THE COURT: "Just a minute, let me interrupt, Mr. Donnell, if you-do you have a copy of this order?"

MR. DONNELL: "No, I've never received it. Up to 8:30 this morning when I checked the post office, I've never gotten a copy of the order." (T., pp. 9, 10.)

MR. DONNELL: "Further, this is clearly an issue for the Supreme Court of Ohio to address or the Supreme Court of the United States***. I think that's a complete violation of Rule 7, Rule 12, and my procedural due process under the Federal Constitution and the State Constitution."

THE COURT: "All right. Thank you. Now that's your objection
as to motion to quash. ***I'm going to overrule your motion or objection." (T., p. 13.)

Then the Judge of the Disciplinary Panel, on his own motion at the beginning of the hearing, "quash(ed) the subpoenas of all of the appellate judges who were subpoenaed [as expert witnesses] :"

THE COURT: "All right. We also have before the panel a matter that has not been officially presented on the basis of a motion and, therefore, the fact that it has not been done, the panel itself is going to move to quash the subpoenas of all of the appellate judges who were subpoenaed on this case under the same reasoning and legal reasons given in the sustaining of the motion to quash with reference to Chief Justice Moyer

or the disciplinary counsel, Mr. Steam (sic), and for Mr. Loff (sic) who is a member of the Supreme Court staff. That motion having been made, we're going to sustain it and they are not permitted and it's not necessary for them to remain as witnesses in this particular case. And the primary reasoning back to that, Mr. Donnell, so you'll know is that this case, as you so aptly put forward in your writings, has to do with three hearings before the Domestic Relations Court of Sandusky County. Am I correct on that?"

MR. DONNELL: "Yes, your Honor."

THE COURT: "Basically, that's what you're--so the allegations that are presented or are going to be presented to this panel today--"

MR. DONNELL: "No, Your Honor, if I may--"

THE COURT: "Just a minute. The allegations that are going to be presented today by the disciplinary counsel has (sic) to do with those matters that took place at those three hearings. The Court of Appeals judges have absolutely no knowledge because they weren't here. So I don't see how they can add anything to either side."

MR. DONNELL: "May I be heard?"

THE COURT: "Just a moment. Don't interrupt me now."

Just a moment, will you please?

MR. DONNELL: "I'm sorry your Honor."

THE COURT: "'You're quick to interrupt and you're also quick to apologize. I appreciate that."

MR. DONNELL: "Thank you, Your Honor."

THE COURT: "Therefore, the motion that the panel has made to quash the subpoenas of all of the appellate judges is

sustained. Now, if you wish to make a response you may do so."

MR. DONNELL: "Well first of all, for the record, I object to the ruling. But I would like the record to show that the request, as I heard it out there by Judge Resnick was just that the order of the witnesses be changed. He did not object. I talked to Judge Resnick twice in his office when I served the subpoena upon him. He did not object to it, he went along with it.

"The reason, and this is part of my support for my objection so that the panel understands, is that Respondant (sic) or Defendant in a trial has the right to bring in expert witnesses. And certainly, judges on the Sixth District Court of Appeal (sic) would have to be considered experts. Further, they have direct knowledge, as much as anybody sitting in this panel has, upon what happened before Judge Weaver and Respondant (sic) because that's what this entire DR allegations are about against Mr. Donnell this morning. It has to do with these three courtroom proceedings in this very courtroom, and the third one in that one we just came from down there which they call the jury room. T., pp. 17,18.

The testimony of the expert witness that petitioner (respondent in the state supreme court case) was prevented from getting into evidence at the disciplinary hearing was the following:

JUDGE RESNICK (to the other attorney in domestic case):

"You're not going to have an opportunity to respond to Mr. Donnell's third assignment of error, if he argues it in his rebuttal, and I had a question about that.

"He argues that the trial court, basically, I think, evidenced prejudice against him and then proceeds to (inaudible). The transcript is quite lengthy, but nevertheless there are comments such as referring to him as a lawyer, you'd never know it. I mean you're telling him when he can cross examine. And then the Court says 'It's your sworn statement; you're an officer of the court.' And he says 'Of course, I

> understand, Your Honor.' And she says 'Well, I'm not so sure about that always.'
>
> "Comments of that tone, seem repeated throughout the thing, is that--How would you characterize those comments of the trial court?" (T., pp. 18,19, June 12, 1995.)

A final excerpt, going back to the transcript of the disciplinary hearing:

> THE COURT: "You're ready to proceed?"
>
> MR. DONNELL: "Just so the record reflects my objections to date." T., p. 21.

All of these excerpts from the transcript of the disciplinary hearing were placed verbatim into petitioner's Brief Of Respondent On Objections To Findings Of Fact, Conclusions Of Law, And Recommendation Of The Board Of Commissioners On Grievances And Discipline Of Supreme Court Of Ohio, filed January 17, 1997, in the Supreme Court, under the following objections:

> "Objection No. 1: The Disciplinary Panel's proceedings just prior to its disciplinary hearing violated respondent's procedural due process rights as set out in Civil Rule 7, Civil Rule 12 and mandated by In re Ruffalo, 390 US 544 (1968).
>
> "Objection No. 2: The Disciplinary Panel's rulings respondent's hearing on April 19, 1996, substantially deprived respondent of a due process hearing as required by In re Ruffalo, 390 US 544 (1968)."

Upon review of its hearing by the Disciplinary Panel, the Supreme Court did not address, decide or even mention petitioner's objections under the Due Process Clause and the "person" clause of the Fourteenth Amendment.

ARGUMENT

1. Does the Fourteenth Amendment protect two separate persons where an attorney represents himself?

   A compelling reason for this Court to grant a writ of certiorari is that petitioner's two-person federal question is important to a large group of persons, without which Article VI's "have the assistance of counsel" would have no practical meaning to many, many citizens of the United States, and without which, all of our present-day Judges and Justices could not meet, nor have the experience from, the initial requirement for their positions in our organized society. In 1968 this Court pointed out that a proceeding to suspend an attorney's license to practice law is a quasi criminal proceeding, and held that it "must comport with the requirements of due process of law," In re Ruffalo, supra. The contours of the "person" clause in the Fourteenth Amendment need to be sorted out more precisely by this court, and the undisputed, precise facts from the disciplinary hearing make this case ripe for adjudication now. Both appendices C and D, which were entered into evidence, clearly show on the face of each document that each was written by petitioner as a litigant father and not as an attorney, which he objected to at the hearing, citing the Fourteenth Amendment.

2. Can a state hearing panel excuse state officials from having to testify where notice and an opportunity to oppose is given after its action, but at the beginning of the hearing itself?

   Petitioner's property interest that is protected by the Due Process Clause of the Fourteenth Amendment is his state license to practice law in the State courts. But like the wipe out from one beginning domino, his suspended license in the state court does likewise to his licenses to practice law in federal courts which petitioner has used from time to time, e.g., see petitions for certiorari numbers 84-247, 86-1597 (started in district court), 88183 (two cases), and 95-1239, and other attorneys doing appeals.

A compelling reason for this Court to grant a writ of certiorari under the federal due process law is because this alleged due process violation comes from proceedings in the state's highest court where citizens from every state expect their highest court to unequivocally be the leading-- even shining-- example of fundamental fairness for the inferior state courts to follow under its supervisory power, and for its many citizens' higher expectations from it.

The root power of the highest state courts to do or not to do justice in their court proceedings is second only to the supreme power of this Court, which had this to say about procedural due process:

> "Because the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society***we believe that the denial of procedural due process should be actionable for nominal damages without prior proof of actual injury. Carey v. Piphus, 435 US 247, 266 (1978).

Since 1932 and especially 1960's, in a little bit here and a little bit there, this Court has been rounding out the contours of the Due Process Clause of the Fourteenth Amendment, e.g., fleshing out more precisely what is sufficient notice and what is a meaningful opportunity for a hearing? The undisputed facts in this case furnish a compelling reason for this Court to once again round out more fully the contours of the Fourteenth Amendment since both notice and a hearing were given by the State , but were they meaningful in a quasi criminal case as enjoined by the federal Constitution?

Respectfully submitted,

s/ Walton Halleck Donnell
Walton Halleck Donnell
Petitioner counsel pro se

79 Ohio St.3d] DISCIPLINARY COUNSEL v. DONNELL

Statement of the Case

OFFICE OF DISCIPLINARY COUNSEL v. Donnell.
[Cite as Disciplinary Counsel v. Donnell (1997), 79 Ohio St.3d501.

Attorneys at law Misconduct-Six-month suspension-Contacting an adverse party represented by counsel Asking a question with no reason to believe it is relevant and is intended to degrade a witness—Asserting personal knowledge of facts at issue while not testifying-Engaging in conduct which is discourteous or degrading to a tribunal Failing to follow established rules of procedure.

(No. 96-2810—Submitted May 20, 1997—Decided October 1, 1997.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 95 39.

On January 31, 1994 respondent, Walton Halleck Donnell of Woodville, Ohio, Attorney Registration No. 0020371, and his wife entered into an agreed dissolution of their marriage under which respondent's wife was granted custody of their three minor children. In the fall of 1994, respondent, acting as his own counsel filed three motions with respect to this agreement were heard by Sandusky County Common Pleas Court Judge Margaret K Weaver a motion by respondent for a restraining order to prevent his nine-year old daughter from flying to Florida to visit her grandmother was heard on August 31, 1994; a motion for change of custody was heard on September 19, 1994; and a motion for visitation rights was heard on October 31, 1994.

On June 28, 1995 relator, Office of Disciplinary Counsel, filed an amended complaint charging respondent with violating several disciplinary rules in connection with the hearings on these motions. After respondent filed his answer, a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board") heard the matter on April 19, 1996.

The panel found that although respondent was told that his daughter was already in Florida before the August 31, 1994 hearing, he refused to dismiss the motion and proceeded with the hearing. The panel further found that respondent had stated that although he knew he could not prevail on the motions, he brought them to ruin his former wife financially. The panel concluded that respondent's actions thereby violated DR 7-102(A)(1)) (filing a suit or taking other action merely to harass or injure another). The panel also found that respondent had persistently contacted his ex-wife while the motions were pending, and concluded that he thereby violated DR 7-104(A)(1)) (an attorney is prohibited from contacting an adverse party represented by counsel).

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Opinion Per Curiam

The panel found, on the basis of the testimony of Judge Weaver and respondent's own admission, that he was not objective in handling his own case, and concluded that respondent thereby violated DR 6-101(A)(1) (a lawyer shall not handle a legal matter which he knows or should know he is not competent to handle without associating himself with a lawyer who is competent to handle it). The panel also found that during cross-examination at the hearings, respondent asked questions about drug use and pedophilia that were not relevant to the issues before the court. The panel concluded that respondent thus violated DR 7-106(C)(2) (asking a question which the lawyer has no reason to believe is relevant and is intended to degrade a witness or other person). On numerous occasions during the hearings, and despite admonishments by the judge, respondent without testifying asserted his personal knowledge of the facts. The panel concluded that respondent thereby violated DR 7-106(C)(3)) (prohibition against asserting personal knowledge of the facts at issue if not testifying). The panel further found that during the hearings, respondent constantly argued with and interrupted the judge and showed little or no respect for witnesses, and concluded that he thereby violated DR 7-106(C)(6) engaging in conduct which is discourteous or degrading to a tribunal). Finally, the panel found that respondent habitually violated the rules of procedure by giving the court orders, cross-examining his own witnesses, arguing with

witnesses, and attempting to call opposing counsel as a witness. The panel concluded that respondent thus violated DR 7-106(C)(7)) (failing to follow established rules of procedure).

In mitigation the panel noted that respondent was seventy-one years old, earned only $8,000 from his law practice in 1995, and otherwise lived on Social Security, and that his hostility toward his former wife and her boyfriend was sometimes justified. The panel recommended that respondent be suspended from the practice of law for one year with the last six months of the suspension stayed, during which year respondent would be on probation. On review, the board dismissed the findings and conclusions of the panel with respect to DR 6101 and 7-102. The board further recommended that respondent be suspended for one year, with the entire year stayed, and that he be placed on probation for that year.

J. Warren Bettis, Interim Disciplinary Counsel, and Lori J. Brown, Assistant Disciplinary Counsel, for relator.

Walton H. Donnell, pro se.

Per Curiam. We adopt the findings and conclusions of the board, and hold that by his conduct in the various hearings, respondent violated DR 7-104(A)(1) and 7-106(C)(2), 7-106(C)(3), and 7-106(C)(7). We do not find that respondent acted incompetently or that his actions were merely for harassment purposes. However, we do find that respondent's actions exceeded the bounds of zealous advocacy. As the board aptly noted, "This case is yet another textbook example of why an attorney should not represent himself."

In Bar Assn. of Greater Cleveland v. Milano (1984), 9 Ohio St.3d 86, 88, 9 OBR 315, 317, 459 N.E.2d 496, 498, we quoted from EC 7-36: "Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of the proceedings." Even in a situation where

an attorney represents himself he must follow the Code of Professional Responsibility and show proper respect for the court.

We hereby suspend respondent from the practice of law for six months. Costs taxed to respondent.

Judgment accordingly.

Douglas, Acting C.J., Shaw, Tyack, F.E. Sweeney, Pfeifer, Cook and Lunberg Stratton, JJ., concur.

Stephen R. Shaw J., of the Third Appellate District, sitting for Moyer, C.J.

G. Gary Tyack, J., of the Tenth Appellate District, sitting for Resnick, J.

IN THE SUPREME COURT OF OHIO

In re:	: Case No. 96-2810
Disciplinary Counsel, Relator	: NOTICE OF APPEAL
	: TO THE SUPREME
v.	: COURT OF THE
Walton Halleck Donnell, Respondent	: UNITED STATES

Notice is hereby given that Walton H. Donnell, the respondent above-named, hereby appeals to the Supreme Court Of The United States from the final judgment of the Supreme Court of Ohio dated October 1, 1997 suspending said respondent from the practice of law for a period of six months.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (a). Dated October 6, 1997.

s/ Walton H. Donnell
Walton H. Donnell pro se
17980 U.S. 23
Gibsonburg, OH 43431
Phone: (419) 849-3252

PROOF OF SERVICE

I certify that a copy of the foregoing Notice of Appeal to The Supreme Court of the United States was sent by regular U.S. mail to Disciplinary Counsel Lori J. Brown, counsel of record, and to the Honorable Jonathan W. Marshall, Secretary, Board Of Commissioners On Grievances and Discipline of the Supreme Court of Ohio, 41 South High Street, Suite 3370, Columbus, OH 43215 this 6th day of October 1997.

s/ Walton H. Donnell
Walton H. Donnell pro se

Affidavit Of Disqualification
Of
Chief Justice Moyer

In the matter of Donnell v. Donnell, Supreme Court No. 95-2134,

Walton H. Donnell, being first duly sworn, says that:

1. Under the United States Constitution, litigant Donnell is a "person" and his business, lawyer Walton H. Donnell, is a person.

2. The person, litigant Donnell and appellant herein, makes all statements herein, and as such, is a member of a group of dissatisfied litigants in Sandusky, Wood, Henry, Fulton Counties.

3. Mr. Joe Hallett, Blade Columbus Bureau, referred to Chief Justice Thomas Moyer as having a "Mr. Rogers-like persona."

4. In discussions by some members of the Donnell litigant group, Chief Justice Moyer is referred to as "the fox," i.e. having Chief Justice Moyer judge judges or their decisions is like having a fox guard the henhouse for Farmer Brown.

5. Litigant Donnell has access to the public records filed in the cases of In re Disqualification of Weaver, 87-AP-103 (September 8, 1987) unreported, In re Disqualification of Weaver, 95AP96 (August 10, 1995), unreported, and Bower v. Bower (July 19,1995) 95-734, Supreme Court declined jurisdiction, Sandusky County.

6. On July 31, 1995, a transcript of the Hicks v. Hicks hearing before Judge Margaret K. Weaver was filed in

the Supreme Court, #9SAP96, with Chief Justice Moyer ruling on said disqualification appeal.

7. On November 22, 1994, in the Donnell v. Donnell case, supra, by judgment entry, Judge Margaret K. Weaver held, the "Court having made no notes regarding its interviews with the minor children***Walton Donnell's motion that such notes be filed in the record is hereby denied." (Emphasis added.)

8. Two weeks before, on November 6, 1994, litigant Donnell's three children (Amanda, 12, Brandy, 10, and Brady Walton, 7) indicated to their father that she wrote things down while in her chambers.

9. Litigant Donnell, affiant herein, has six years experience as a reporter for an Ohio newspaper and radio station and, since 1986 has accumulated little bundles of briefs/appendices in several cases in which Chief Justice Moyer has been involved, 1986-1998.

s/Walton H. Donnell

Sworn to and subscribed before me this 16th day of November 1995.

s/Jeffery C. Bond
Notary

March 4, 1995.

Dear Lisa,

Enclosed is a cashiers check in the amount of $200.00 pursuant to the court's order of November 7, 1994.

The next payment is due on or before April 7, 1995. By that time , Amanda will be a brand new teenager.

Since the kids haven't called for several weeks--- not even to thank their dad for the Valentine candy I sent them--- and since you are enforcing the all-children-go-or-no-children-go bench order which was never journalized, the only thing available to me is to ask you to say hi to them for me. As the wife of an attorney for over 12 years, you know, and it was discussed that first Sunday afternoon following the bench order (in front of the policeman); that a court speaks only through it's journal, i.e., bench orders are not enforceable orders until they are journalized (put on paper and file-stamped by the Clerk of Court). I believe you are doing the kids--especially Brandy and Brady-- a big injustice in following a bench order that never became a valid order of the court.

In a previous letter--one which was placed into evidence at the hearing-- I told you my belief ----concerning what I considered to be the two biggest mistakes I thought you had made in the past 30 years. I now simply say to you, I believe the above discussed is your third one. It's not right, and it hurts the two youngest ones, Brandy and Brady especially.

Yours truly,

s/ Walt

Walton Donnell